

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ELIZABETH ESSERY

V.

HARTFORD LLOYDS INSURANCE  
COMPANY

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CASE NO. 4:17-cv-405

**NOTICE OF REMOVAL**

Defendant Hartford Lloyds Insurance Company (“Hartford”) through undersigned counsel and pursuant to 28 U.S.C §§ 1441 and 1446, files this Notice of Removal of the action captioned as follows: *Elizabeth Essery v. Hartford Lloyds Insurance Company*, Cause No. 17-01-00801 on the docket of the 410th Judicial District Court of Montgomery County, Texas. In support of this Notice of Removal, Hartford respectfully submits:

1. Plaintiff Elizabeth Essery (“Plaintiff”) commenced the state court action against Hartford on or about January 19, 2017, by filing Plaintiffs’ Original Petition and Discovery Requests (the “Original Petition”) in the 410th Judicial District Court of Montgomery County, Texas. Hartford was served with the summons and a copy of the complaint on January 25, 2017. Hartford has not filed its Original Answer.

2. A copy of all process, pleadings, and orders in the state-court action is filed with this Notice of Removal.

3. The Petition avers that Plaintiff is a resident of Montgomery County, Texas. (Pet. ¶ 1)

4. The Petition contains no allegations as to the citizenship of Hartford, stating only that “Hartford is an insurance company doing business in the State of Texas.” (Pet. ¶ 2) In fact,

Hartford is an unincorporated association of 10 underwriters, all of whom reside outside of Texas and are citizens of a state other than Texas – the domiciliary states for the underwriters include Illinois and Connecticut only. For diversity purposes, the citizenship of an unincorporated association is determined by the citizenship of each member of the entity.<sup>1</sup> The members of a Lloyds plan are the underwriters alone.<sup>2</sup> Because each of the underwriters is a citizen of a state other than Texas, Hartford is not a Texas citizen.<sup>3</sup> The following are the 10 underwriters of Harford Lloyds Insurance Company listed with their respective states of domicile and citizenship as of the commencement of the lawsuit and its subsequent removal:

- a. Eric I. Haslun, State of Connecticut;
- b. Michael R. Hazel, State of Connecticut;
- c. Donald C. Hunt, State of Connecticut;
- d. Lisa S. Levin, State of Connecticut;
- e. Christopher Mango, State of Connecticut;
- f. Randle L. McKee, State of Illinois;
- g. Mary B. Nasenbenny, State of Illinois;
- h. Anthony J. Salerno, Jr., State of Connecticut;
- i. Terence D. Shields, State of Connecticut; and
- j. Leslie T. Soler, State of Connecticut.

5. The Petition alleges that Plaintiff owns property located in Montgomery County, Texas that was insured by an insurance policy issued by Hartford. (Pet. ¶ 7)

6. The Petition alleges that “[o]n or about April 17, 2016, a storm hit the The Woodlands, Texas area, damaging Ms. Essery’s house and other property.” (Pet. ¶ 8)

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<sup>1</sup> *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-95 (1990).

<sup>2</sup> *Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882 (5th Cir. 1993); *Massey v. State Farm Lloyds Ins. Co.*, 993 F.Supp. 568, 570 (S.D. Tex. 1998) (“In this case, therefore, the citizenship of State Farm Lloyds must be determined solely by the citizenship of its members, or underwriters.”).

<sup>3</sup> *Massey*, 993 F.Supp. at 570 (“Because no member of State Farm Lloyds is a Texas resident, complete diversity exists between the parties to this action, and this Court has federal diversity jurisdiction under 28 U.S.C. § 1332.”); *Rappaport v. State Farm Lloyds*, 1998 WL 249211 (N.D. Tex. 1998) (“Because the Court finds that State Farm Lloyds is an unincorporated association whose members are completely diverse with Plaintiff, Plaintiff’s Motion to Remand is DENIED.”).

7. The Petition alleges that Defendant improperly denied and/or underpaid the claim. (Pet. ¶ 9)

8. Plaintiffs allege in the Petition that they are seeking “monetary relief over \$100,000 but not more than \$200,000.” (Pet. ¶ 4) This amount satisfies the minimum jurisdictional requirements of this Court.

9. This Notice of Removal is filed within 30 days of service of the Petition and is therefore timely under 28 U.S.C. §1446 (b).

10. Hartford denies the underlying facts as alleged by Plaintiff or as summarized in this Notice. Hartford expressly denies that it has any liability to Plaintiff.

### **DIVERSITY JURISDICTION**

11. This Court has original jurisdiction pursuant to 28 U.S.C §1332(a), and this matter is therefore removable to this Court pursuant to 28 U.S.C. §1441(a), because there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Plaintiff is a citizen of Texas. Hartford’s underwriters are domiciled in Connecticut and Illinois, and Hartford maintains its principal place of business in Connecticut.

12. The amount in controversy exceeds the jurisdictional minimum of \$75,000 set by 28 U.S.C. §1332(a). In the Petition, Plaintiff alleges that she seeks “monetary relief over \$100,000 but not more than \$200,000.” (Pet. ¶ 4) Plaintiff also seeks additional damages, including “exemplary and/or treble damages” (Pet. ¶ 23) and attorneys’ fees (Pet. ¶¶ 25-26) Attorneys’ fees and penalties may be included as part of the amount in controversy for jurisdictional purposes. *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes, Inc.*, 227 F.3d 326, 330 (5th Cir. 2000).

13. Plaintiffs in Texas are also not limited to recovery of damages requested in their pleadings. “Litigants who want to prevent removal must file a binding stipulation or affidavit with their complaints . . . .” *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir. 1995) (quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir. 1992). “The general principle is that Plaintiff will have to show that they are bound irrevocably by their state pleadings.” *Id.* at 1412, n. 10.

14. No binding stipulation or affidavit was filed with the Petition.

### **REMOVAL PROCEDURE**

15. Hartford has provided the clerk of the 410th Judicial District Court of Montgomery County, Texas with notice of this removal.

16. Pursuant to Local Rule 81, copies of the following documents are hereby provided to the clerk of this Court for filing in connection with this Notice of Removal:

- a. Index of matters being filed;
- b. The state-court file, including all executed process, pleadings and exhibits, and state-court orders, which will be supplemented with certified copies as soon as they are available from the state court;<sup>4</sup>
- c. A list of all parties and their counsel of record.

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<sup>4</sup> Hartford has requested a copy of the state court’s file. Copies of documents contained in the state court file are included here, pending receipt of the court’s file. Hartford will supplement this removal to provide the complete court file.

WHEREFORE, Hartford hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ Martin R. Sadler

Martin R. Sadler

Attorney-in-Charge

Texas Bar No.: 00788842

Federal Bar No.: 18230

[msadler@lawla.com](mailto:msadler@lawla.com)

LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD,  
A LAW CORPORATION

801 Travis Street, Suite 1800

Houston, Texas 77002

Telephone: (713) 222-1990

Facsimile: (713) 222-1996

ATTORNEY-IN-CHARGE  
FOR HARTFORD LLOYDS INSURANCE  
COMPANY

OF COUNSEL:

Rebecca A. Moore

Texas Bar No. 24031701

Federal ID No. 31001

[rmoore@lawla.com](mailto:rmoore@lawla.com)

LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD,  
A LAW CORPORATION

801 Travis Street, Suite 1800

Houston, Texas 77002

Telephone: (713) 222-1990

Facsimile: (713) 222-1996

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above pleading has been forwarded by electronic service on this the 9th day of February, 2017 to:

Richard D. Daly

Ana M. Ene

Daly & Black, P.C.

2211 Norfolk Street, Suite 800

Houston, Texas 77098

/s/ Martin R. Sadler

Martin R. Sadler